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LABOR, DEPARTMENT OF

Stricter standards and expanded responsibilities for independent qualified public accountants (IPAs) were proposed in the Semiannual Report of the U.S. Department of Labor's Office of Inspector General (OIG) for the period ending 3/31/89. The report also criticized the adequacy of audit reports by IPAs on private pension plans. The report said oversight by the Labor Department of the $1.6 trillion in private pension plan assets was "ineffective" and warned that an unknown portion of those assets may be at risk. The report noted that one of the safeguards written into ERISA to protect private pension monies is the requirement that the annual report for all plans with over 100 participants include a report by an IPA. The report said, "Although audit reports are required annually for submittal to the Department, the IPAs may omit from the scope of the audit and report any assets held in trust in a government-regulated industry such as banking, insurance, and savings and loan institutions...Limited scope reviews, under ERISA, although classified as audits, do not adequately test the employee benefit plan assets...They are of little value and give no assurance of asset integrity to benefit plan participants." The OIG's report also expressed concern about the adequacy of private pension plans' internal controls. The report recommended that Congress amend ERISA to: 1) Restrict sharply any exemptions to full and complete reporting by the IPAs of the status of employee benefit plan assets; 2) Direct IPAs to search for any prohibited transactions and require that all findings--regardless of their materiality--be communicated directly to DOL as well as to plan administrators and trustees; 3) Mandate that IPAs conduct compliance testing of fund operations as well as their traditional financial audit; and 4) Establish appropriate standards for IPA performance and appropriate sanctions that may be applied against IPAs that do not meet them. The report also recommended that the AICPA "establish an ERISA Practice Section that would provide appropriate training in ERISA auditing issues, and to require submission to peer reviews." The report also noted that the OIG is reviewing ways to improve the quality of plan audits and that the review showed areas where auditors' standards are not being met. Copies of the report are available from the U.S. Department of Labor, Office of the Inspector General, Room S-5506, 200 Constitution Ave., N.W., Washington, D.C. 20210.

OFFICE OF FEDERAL PROCUREMENT POLICY

A proposed new policy letter dealing with consultants and conflicts of interest has been issued by the OFPP and comments are requested by 8/7/89 (see the 6/7/89 Fed. Reg., pp. 24435-38). The OFPP policy letter establishes 1) government-wide policy relating to conflict of interest standards for persons who provide consulting services to the U.S. government and to persons who contract with the U.S. government and 2) procedures, such as registration, certification, and enforcement requirements, to promote compliance with those standards. The following types of consulting services are covered: 1) Advisory and assistance services; 2) Services related to support of the preparation or submission of bids and proposals for Federal contracts; and 3) Such other services related to Federal contracts as may be specified in the regulations. The policy letter states that "advisory and assistance services" are those services defined in OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services," except accounting, technical, legal and engineering services. Only those compensated services provided pursuant to contracts are covered by the policy document, the OFPP said. Such services include services provided by individual experts and consultants; management and professional support services; and the conduct and preparation of studies, analyses, and evaluations. The OFPP explained that the policy is being published in accordance with section 8141 of the 1989 Department of Defense Appropriation Act (see the 10/3/88 and 9/26/88 Wash. Rpts.). The Act directs that government-wide regulations must be promulgated implementing the provisions of the section in light of the guidance in the policy letter within 180 days after the date of publication of the final version of the policy letter. If the President determines the promulgation of such regulations would have a significant adverse effect on the mission of Federal agencies, he is empowered to negate the regulations. For further information after reading the proposed policy letter, contact Richard A. Ong at the OFPP at 202/395-6810.

TREASURY, DEPARTMENT OF

Procedures for issuing ruling letters involving substantive areas have been revised by Revenue Procedure 89-34, which modified Revenue Procedure 89-1 (see Internal Revenue Bulletin 1989-20, dated 5/15/89). The recently released revenue procedure states that the National Office of the IRS will no longer issue a ruling with respect to an issue that is "clearly and adequately addressed by a statute, regulation, decision of the Supreme Court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin except in extraordinary circumstances." The example of an extraordinary circumstance given in the revenue procedure is a request for a ruling required by a governmental regulatory authority in order to effectuate a transaction. The revenue procedure also adds a new section requiring that the request for the ruling must contain a statement supporting the taxpayer's judgement that the issue in the ruling is not clearly and adequately addressed by any of the above listed sources. The revenue procedure applies to all ruling requests postmarked or, if not mailed, received by 30 days or more after 5/15/89.

New reporting requirements for taxpayers claiming the dependent care credit under section 21 of the Internal Revenue Code or taking the dependent care exclusion under section 129 of the Code are the subject of guidance issued by the IRS in Notice 89-71. Guidance is also provided to child and dependent care providers. The IRS explained that the Family Support Act of 1988 requires that 1) taxpayers who take the tax credit or exclusion write in the correct name, address and taxpayer identification number (TIN) of the care provider on their Federal income tax returns, and 2) care providers, except those that are tax-exempt, give their TIN to any client who plans to take a credit or an exclusion for the cost of the care. Beginning with 1989 tax returns filed in 1990, anyone claiming the credit or the exclusion must include the correct name, address, and TIN of the care provider. For individuals, their social security numbers are their correct TINs. For others, generally the employer identification number is the correct TIN. Care providers who willfully refuse to comply with this new requirement may be subject to a $50 penalty for each violation. Taxpayers wishing to claim the tax credit or to take the exclusion should have the care provider fill out new IRS Form W-10, Dependent Care Provider's Identification and Certification, and should keep the form with their tax records. Copies of Form W-10 are available at IRS offices or by calling the IRS at 800/424-3676. The IRS said if the care provider refused to give all the necessary information, taxpayers should provide as much information as they can and keep records. Notice 89-71 is scheduled to be published in Internal Revenue Bulletin 1989-26, dated 6/26/89. For further information after reading the notice, contact Joel S. Rutstein at the IRS at 202/566-4430.

Additional guidance relating to integration rules for qualified retirement plans was issued by the IRS in Notice 89-70. The IRS said the notice supplements proposed regulations issued by the IRS last year to implement changes mandated by the Tax Reform Act of 1986 to section 401(a) of the Internal Revenue Code to provide rules dealing with permitted disparity in contributions or benefits under qualified plans (see the 11/15/88 Federal Register and the 11/21/88 Wash. Rpt.).

Notice 89-70 specifically provides the following: 1) A modification of the definition of covered compensation stated in the proposed regulations; 2) Additional alternatives for the choice of integration levels in both defined contribution excess plans and defined benefit excess plans; 3) Additional alternatives for the choice of an offset in a defined benefit offset plan; 4) Guidance concerning reliance on determination letters issued with respect to defined benefit plans that use an integration level other than covered compensation, an offset based on an amount other than covered compensation, or a uniform factor in determining the portion of a participant's benefits attributable to employee contributions; 5) Additional methods by which certain types of career average plans may meet the permitted disparity requirements; and 6) Additional guidance on adjustments for the payment of retirement benefits before social security retirement age. Notice 89-70 is scheduled to be published in Internal Revenue Bulletin 1989-25, dated 6/19/89. For further information after reading the notice, contact the Employee Plans Technical and Actuarial Division of the IRS at 202/566-6783 between 1:30 and 4:00 p.m. Eastern time.

<u>Conditions under which certain trade or professional organizations may sponsor master and prototype (M&P) pension and profit-sharing plans will be expanded soon</u>, the IRS said in Announcement 89-79. In addition, certain M&P and regional prototype plans will be allowed to base participant benefits on less than total compensation and to permit after-tax employee contributions in prototype plans that designate the prototype plan sponsor as plan administrator. The IRS said Revenue Procedure 89-9, which contains the Service's procedures for issuing opinion letters for M&P plans, will be expanded to permit a trade or professional organization which is exempt from Federal taxation under section 501(c)(6) of the Internal Revenue Code to sponsor a standardized defined contribution plan which is intended to be made available through the organization's member institutions for adoption by nonmember employers. The expanded rule will apply, the IRS said, only if the member institutions of the trade or professional organization are eligible to be M&P sponsors in their own right. To qualify, the trade or professional organization must maintain a list of those members which make its plan available to adopting employers. Revenue procedure 89-13, which contains the Service's procedures for issuing notification letters for regional prototype plans, will be modified to provide that the IRS will accept applications for prototype plans which provide for after-tax employee contributions if the basic plan document designates the prototype plan sponsor as plan administrator. Announcement 89-79 is scheduled to be published in Internal Revenue Bulletin 1989-25, dated 6/19/89.

<u>SPECIAL: SENATE JUDICIARY COMMITTEE HOLDS HEARING ON RICO</u>

<u>The Senate Judiciary Committee held a hearing on S. 438, the RICO Reform Act of 1989, on 6/7/89</u>. S. 438, which would amend the civil provisions of the Racketeer Influenced and Corrupt Organizations (RICO) title of the Organized Crime Control Act of 1970, was introduced 2/22/89 by Sen. Dennis DeConcini (D-AZ), who chaired the hearing (see the 2/27/89 <u>Wash</u>. <u>Rpt</u>.). Among the witnesses at the hearing was Philip A. Lacovara, who testified on behalf of the Business Coalition for RICO Reform, of which the AICPA is a member. Mr. Lacovara noted that S. 438 is the result of "several years of negotiation" and that it is "the collective opinion of the members of the Reform Coalition that this compromise legislation stands the best chance of passing both houses of Congress in the 101st Congress." The primary purpose of S. 438, Mr. Lacovara said, is to "limit the use of civil RICO by plaintiffs in civil litigation that has historically been tried in state court or should be litigated under directly applicable existing Federal statutes." He cited the following reasons for enacting S. 438: 1) The number of civil RICO

suits being filed in the Federal courts threatens the courts' ability to handle other cases of concern under Federal law; 2) Abusive civil RICO suits are not being summarily dismissed; 3) Civil RICO is "federalizing" state fraud law and displacing litigation that has traditionally been tried in our state courts; and 4) Civil RICO is distorting the already established system for regulating the securities markets, including the nature and extent of private remedies. Mr. Lacovara reminded the Committee that S. 438 is "very similar in content" to legislation unanimously approved by the Judiciary Committee in the last Congress and urged the Committee to again approve the proposal. Among the other witnesses at the hearing were representatives of the U.S. Department of Justice, American Bar Association, AFL-CIO, and Public Citizen's Congress Watch.

SPECIAL: **AICPA TESTIFIES IN SUPPORT OF LEGISLATION TO REFORM CIVIL TAX PENALTIES**

The AICPA testified in support of H.R. 2528, legislation to reform the civil tax penalty system, at a 6/6/89 hearing before the House Ways and Means Subcommittee on Oversight. The AICPA testimony was presented by Harvey L. Coustan, a member of the Federal Taxation Executive Committee. He testified that the bill includes several features that will help rationalize and improve the overall penalty structure: 1) The targeting of penalties so that they apply only to the relevant infraction; 2) The coordination of penalties in order that there will not be multiple penalties for a single infraction; and 3) The phasing in of certain penalties, such as the $50-per-return penalty for information reporting violations. Mr. Coustan said the "overall penalty structure reflected in H.R. 2528 represents sound tax policy in that the goal of penalties should be to encourage tax compliance rather than to punish or to raise revenue." He said that with one exception the suggestions included in his testimony for improving the bill are in the nature of "fine-tuning." The recommendation he said was "absolutely critical" related to the preparer penalty. Mr. Coustan said it is "imperative that some means be found to avoid penalizing the preparer when a nonfrivolous position is adequately disclosed on the return." With respect to accuracy penalties, Mr. Coustan said that the AICPA strongly endorses the following provisions of H.R. 2528: 1) The targeting of the negligence penalty to the portion of the understatement related to the negligence; 2) The repeal of the presumptive negligence penalty when an information return item is omitted from the tax return; 3) The adoption of standardized waiver criteria; 4) The expanded definition of "substantial authority;" and 5) The annual publication of a list of positions for which the IRS believes there is no substantial authority. However, he said the AICPA believes the last two provisions can be improved even further. H.R. 2528 was introduced 6/1/89 by Rep. J.J. Pickle (D-TX), the chairman of the Oversight Subcommittee (see the 6/5/89 Wash. Rpt.).

SPECIAL: **AICPA TESTIFIES ON BILL TO SIMPLIFY CORPORATE AMT**

Legislation intended to simplify the alternative minimum tax (AMT) for corporations received the general support of the AICPA at a 6/8/89 hearing before the House Ways and Means Subcommittee on Select Revenue Measures. The measure, H.R. 1761, was introduced by Rep. Dan Rostenkowski (D-IL), the chairman of the Ways and Means Committee. Professor Stewart Karlinsky, the chairman of a special AICPA task force on the AMT, told the Subcommittee, "The AICPA particularly endorses proposed changes to eliminate all reference to the taxpayer's treatment of certain items for book purposes in determining alternative minimum tax." He said the AICPA has opposed the use of the book income standard for Federal tax purposes in the past and that the Institute endorses the position that "the adjusted current earnings rules should be simplified instead of the book income adjustment being extended beyond 1989." Professor Karlinsky also noted several issues that still must be considered to truly simplify the AMT: 1) Inclusion in the bill of a specific list of items that would result in adjustments to alternative minimum taxable income instead of the two very general earnings and profits adjustments; 2) Deletion from current law and the bill the rule requiring reduction of the basis of assets in certain ownership changes; 3) Exemption from AMT, income of bankrupt or insolvent companies resulting from discharge of their indebtedness; and 4) Further examination of ways to simplify the bill for smaller corporations.

SPECIAL: SENATE FINANCE COMMITTEE CHAIRMAN INTRODUCES BILL TO DELAY IMPLEMENTATION OF SECTION 89 UNTIL 1990; MARK-UP SCHEDULED

Senate Finance Committee Chairman Lloyd Bentsen (D-TX) introduced legislation which would make major changes in section 89 on 6/6/89. Forty-nine senators joined Chairman Bentsen in co-sponsoring the measure, including a bipartisan majority of the Finance Committee. The bill, S. 1129, would make the following changes: 1) Delay all section 89 rules until 1990; 2) Repeal the section 89 non-discrimination rules; 3) Create a simple non-discrimination test that employers or insurance companies can satisfy through plan design; 4) Adopt a series of special rules for small business that take into account health insurance underwriting practices for small business; and 5) Repeal sanctions for noncompliance with the qualification rules. Many of the concerns raised by AICPA Tax Division representatives (e.g., the cliff effect, affordability tests, treatment of cafeteria plans and small business exception) during meetings with Department of Treasury and Congressional officials have been addressed in Chairman Bentsen's bill. The Tax Division has also testified before the House Ways and Means and Senate Finance Committees in support of modifying section 89 (see the 5/15/89 and 5/8/89 Wash. Rpts.), as well as submitted written testimony to the House and Senate Small Business Committees (see the 4/17/89 Wash. Rpt.).

S. 1129 has been referred to the Senate Finance Committee, which has scheduled a mark-up session on the measure for 6/13/89. The session is scheduled to begin at 2:30 p.m. in Room 215 of the Dirksen Senate Office Building in Washington, D.C.

For further information contact Shirley Twillman at 202/737-6600.

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